Supreme Court, U.S.
FILED

091050 MAR 1- 2010

OFFICE OF THE CLERK

No. 09-____

IN THE

Supreme Court of the United States

MARINE EXPRESS, INC.,
Petitioner,

v.

JERROD KARMIN,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of California

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PETITION FOR A WRIT OF CERTIORARI

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March 1, 2010

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QUESTION PRESENTED

This case involves the conflicting interests of 1) maritime employers engaged in interstate and international commerce who pay their seamen employees according to federal law, and 2) their seaman employees who want to be paid under state law. Seamen are expressly exempt from overtime pay under federal law. 29 U.S.C. § 213(b)(6).

The question presented is whether the California Court of Appeal's decision, which follows California Supreme Court and Ninth Circuit case law and mandates the payment of overtime wages to seamen working in international and interstate commerce in California waters, impermissibly violates federal statutory law which expressly exempts seamen from overtime. The basis for the California Court of Appeal's decision (and the Ninth Circuit and California Supreme Court decisions it followed) is a broad interpretation of the savings clause in a federal statute and directly conflicts with this Court's holding in *United States v. Locke*, 529 U.S. 89 (2000) and the holdings of other federal courts that savings clauses in federal statutes should be narrowly interpreted in a maritime context.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Petitioner is not owned by a parent corporation and is not publically traded.

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PETITION FOR A WRIT OF CERTIORARI

This Court should grant certiorari to address and resolve the important and far-reaching issue of whether federal law or state law governs the wages owed seamen, and particularly those engaged in interstate commerce as respondent Karmin was.

JURISDICTION

Petitioner Marine Express, Inc. ("Marine Express") seeks writ review of the December 2, 2009 denial by the California Supreme Court of its petition for review of the August 27, 2009 opinion of the California Court of Appeal, First Appellate District, Division 5. This Court has jurisdiction to review that decision on a writ of certiorari pursuant to 28 U.S.C. § 1257 and Rule 10(c) because the validity of Cali-

fornia's overtime wage law as applied to seamen is drawn into question due to its repugnancy to the laws of the United States.

STATUTORY PROVISION INVOLVED

Federal law, namely, the Fair Labor Standards Act ["FLSA" or "the Act"], 29 U.S.C. § 201 *et seq.* addresses wages and overtime pay for various types of workers. It specifies the types of workers who are exempt from overtime pay:

> Section 207 of this title [pertaining to overtime pay] shall not apply with respect to:
>
> (6) any employee employed as a seaman.

29 U.S.C. § 213(b)(6)

The Act contains a savings clause providing that:

> no provision of this chapter or of any order thereunder shall excuse noncompliance with any . . . State law. . . establishing a minimum wage higher than the minimum wage established under this chapter or a maximum workweek lower than the maximum workweek established under this chapter.

29 U.S.C. § 218(a).

In holding state law governs the wages of seamen, the California Court of Appeal followed the California Supreme Court's decision in *Tidewater Marine Western, Inc. v. Bradshaw*, 14 Cal. 4th 557 (1996). Like the California Supreme Court, it construed the FLSA's savings clause broadly to permit California law to override the Act and it ordered the payment of overtime to seamen despite the federal statutory exemption from overtime for seamen. Further, it penalized Marine Express for complying with federal

law. The Court of Appeal also failed to follow this Court's decision in *Locke*, in which this Court held that savings clauses in statutes affecting maritime commerce must be narrowly construed to promote the required uniformity of maritime law.

FACTUAL AND PROCEDURAL BACKGROUND

1. KARMIN'S WORK IN INTERSTATE AND INTERNATIONAL COMMERCE.

Karmin, a federally-licensed seaman, worked for Marine Express as a captain of its federally-documented vessels. At trial, Karmin stipulated he worked primarily in interstate and international commerce while operating Marine Express' vessels in California waters and the navigable waters of the United States, *i.e.* San Francisco Bay. He transported goods and persons originating outside of California on the last leg of their journey to anchored oceangoing vessels. He also provided a platform for federal Homeland Security operations. (*See* Appendix A, page 2a.)

2. THE CALIFORNIA LABOR COMMISSION PROCEEDINGS.

Karmin's action began in the California Department of Labor where Karmin sought recovery under Cal. Labor Code § 98 for overtime pay for work he performed in interstate and international commerce. After a hearing, the California Labor Commissioner entered an award in his favor for overtime wages under Cal. Labor Code § 203, as well as interest and a waiting time penalty, based on factual findings that Marine Express intentionally withheld Karmin's overtime pay when complying with the FLSA.

3. THE APPEAL OF THE LABOR COMMISSIONER'S AWARD AND THE TRIAL *DE NOVO*.

Marine Express filed a notice of appeal in the Superior Court of Alameda County, which entitled it to a trial *de novo*. Cal. Lab. Code § 98.2. The trial court entered judgment in favor of Marine Express. It held federal law governed because Karmin is a seaman engaged in international and interstate commerce, and under federal law he is expressly exempt from overtime pay. (*See* Appendix A, page 2a.)

4. KARMIN'S APPEAL TO THE COURT OF APPEAL AND MARINE EXPRESS'S PETITION TO THE CALIFORNIA SUPREME COURT.

The California Court of Appeal reversed the trial court's judgment. (*See* Appendix B, page 4a.) It held state law, not federal law, governs the wages of seamen, like Karmin, engaged in international and interstate commerce in California. Marine Express' petition for review by the California Supreme Court was denied. (*See* Appendix C, page 19a.)

REASONS FOR GRANTING THE PETITION

1. SECTION 213(B)(6) OF THE FLSA EXPRESSLY EXEMPTS SEAMEN FROM OVERTIME PAY.

The Act addresses the right of workers to overtime pay. 29 U.S.C. § 207. However, it expressly and unconditionally exempts seamen from overtime wages. 29 U.S.C. § 213(b)(6). The exemption from overtime for seamen was enacted by Congress at the request of the seamen themselves because of a

concern the regulation of a seamen's employment under the FLSA would conflict with other federal laws protecting seamen. *Tidewater*, 14 Cal. 4th at 568.

The Ninth Circuit and California courts have simply ignored Congressional dictates and the express language of the Act in holding that state law, rather than federal law, governs the wages of seamen engaged in interstate and international commerce.

The conflict between California decisions applying California state wage laws to seamen engaged in interstate commerce, and federal cases applying federal wage laws to such seamen has wide-ranging implications. Employers of seamen who comply fully with federal law applicable to maritime commerce should not suffer imposition of significant penalties under state law as Marine Express did.

Review should be granted to resolve this conflict and establish the supremacy of federal law governing the wages of seamen engaged in international and interstate commerce regardless of the waters in which they are performing their work.

2. THE COURT OF APPEAL'S DECISION AWARDING KARMIN OVERTIME PERPETUATES THE ERRONEOUS INTERPRETATION OF A FEDERAL STATUTE AND THE CALIFORNIA COURTS' RATIONALE FOR DOING SO DIRECTLY CONFLICTS WITH THIS COURT'S DECISION IN *UNITED STATES V. LOCKE*.

A. The California Supreme Court and Ninth Circuit have erroneously crafted an "exception" to the seamen's exemption from overtime pay, in violation of the express terms of the FLSA.

Despite the express language of the seamen's exemption from overtime in the Act, the Ninth Circuit, the California Supreme Court and the California Court of Appeal have created a judicial exception to the seamen's exemption from overtime pay under the FLSA. They have disregarded federal law under the guise of a broadly construed savings clause and held California overtime law governs the wages of seamen working in California, whether on matters of local interest or in interstate commerce.

The Ninth Circuit was the first to hold the unequivocal exemption from overtime for seaman under the Act should not apply in every circumstance. In *Pacific Merchant Shipping Ass'n v. Aubry*, 918 F.2d 1409 (9th Cir. 1990), seamen worked on a vessel that remained anchored near offshore drilling rigs to contain and clean up oil spills in California waters associated with those rigs. The Ninth Circuit recognized the state's significant interest in the environmental protection of its own waters and in the absence of international or interstate commerce, which it characterized as the most important factor,

concluded California's overtime law would apply to the seamen:

> *Most important*, because the maritime employees involved in this action are California residents who work on vessels that operate exclusively off the California coast, application of the state's overtime law will not disrupt international or interstate commerce.

Aubry, 918 F.2d at 1425 (emphasis added).

A few years later, the Ninth Circuit balanced federal and state interests in deciding whether federal or state law should govern seamen's wages. In *Fuller v. Golden Age Fisheries*, 14 F.3d 1405 (9th Cir. 1994), the Ninth Circuit explained the limited applicability of *Aubry*, holding its rule applied to seamen primarily involved in matters of local concern, not to seaman engaged in interstate or international commerce:

> In *Aubry*, we held that § 213(b)(6) does not preempt California from applying the state's overtime pay laws to certain maritime employees. We balanced the state and federal interests involved, and said that "states may supplement federal admiralty law as applied to matters of local concern, so long as state law does not *actually conflict* with federal law or *interfere* with the *uniform working* of the maritime legal system."

Fuller, 14 F.3d at 1409 (citations omitted) (emphasis in original).

The Ninth Circuit crafted what it thought was a limited exception to the seamen exemption, but in fact its exception contradicts the express language in

the Act. The Act does not recognize any "exception" for seamen engaged in work of state interest in state waters or any other type of seaman from its coverage.

B. The FLSA Savings Clause does not abrogate the seamen's exemption, or Congress' mandate that uniform federal law should apply particularly in the context of maritime commerce.

(1). The California Supreme Court in *Tidewater Marine Western, Inc. v. Bradshaw* perpetuated the Ninth Circuit's improper abrogation of federal law exempting seamen from overtime.

The California Supreme Court in *Tidewater* relied heavily on *Aubry* to override the express exemption of seamen from overtime pay. The seamen in *Tidewater* were engaged in the same type of work as the seamen in *Aubry*. They worked on boats in the Santa Barbara Channel waiting to clean up oil spills and were not engaged in international and interstate commerce (as Karmin conceded he was).

To justify its departure from the seamen's exemption from overtime pay, the California Supreme Court misapplied and misconstrued the FLSA savings clause. Nothing in the language of the savings clause permits a state to completely eliminate or ignore the seamen's exemption under the FLSA. Rather, the language of the savings clause expressly limits the scope of state wage enactments to 1) increasing the minimum wage or 2) decreasing the maximum workweek. Nonetheless, the California Supreme Court broadly construed the savings clause, reasoning Congress had "left room" for supplementary state regulation of overtime pay for seamen

engaged in work of significant state interest such as the environmental protection of California's waters. *Tidewater*, 14 Cal. 4th at 567.

However, the language of the statute leaves no room for the Ninth Circuit or any state court to "legislate" an exception to the exemption. Nor does the statute's language provide an "opt-out" alternative for states wishing to apply their own wage law to certain types of workers.

(2) This Court rejected state encroachment into maritime matters via a savings clause because of the overriding need for uniformity in maritime commerce.

Four years after *Tidewater*, this Court in *Locke* considered whether a savings clause in a federal statute authorized the encroachment of state law in an area constitutionally and primarily subject to federal regulation. It unequivocally answered the question in the negative. In the process, this Court rejected the underpinnings of *Tidewater*, *i.e.* reliance on a savings clause in a federal statute as a basis for enacting and enforcing state laws directly contradicting the federal statute, especially in a maritime case. Although *Locke* did not specifically address the FLSA's savings clause, this Court explained the limited scope that must be given to such savings clauses in a maritime context.

Locke involved Washington state laws that purported to regulate oil tankers engaged in international commerce while in Washington waters. The

state laws pertained to navigation watch procedures, the crew's English language skills and training, as well as casualty reporting. An association of tanker operators sought to enjoin enforcement of the laws on the ground they encroached in an area long occupied by uniform federal maritime law.

The district court and the Ninth Circuit upheld enforcement of the Washington state laws even though they directly conflicted with federal statutes, relying on the "saving clauses" in the federal statutes. This Court reversed. It held the Ninth Circuit "placed more weight on the saving clauses than those provisions can bear, either from a textual standpoint or from a consideration of the whole federal regulatory scheme of which [the Oil Pollution Act of 1990] is but a part." *Locke*, 529 U.S. at 105.

This Court considered congressional intent in appending savings clauses to statutory schemes. It found it unlikely that:

> Congress would use a means so indirect as the saving clauses . . . to upset the settled division of authority by allowing States to impose additional unique substantive regulation on the at-sea conduct of vessels.

Id. at 106.

This Court "decline[d] to give broad effect to saving clauses where doing so would upset the careful regulatory scheme established by federal law." *Id.*

In *Aubry*, the Ninth Circuit deemed California's application of its overtime law to be a legitimate exercise of the state's police powers for seamen not engaged in interstate and international commerce. This Court in *Locke* rejected any "police power" justi-

fication for encroaching in an area of federal regulation such as maritime commerce. It recognized that Washington's laws would "bear upon national and international maritime commerce" and stated:

> [I]n this area [maritime commerce] there is no beginning assumption that concurrent regulation by the State is a valid exercise of its police powers.

Id. at 108.

Instead, this Court defined the inquiry as:

> whether the local laws in question are consistent with the federal statutory structure, which has as one of its objectives a uniformity of regulation for maritime commerce.

Id.

In *Tidewater*, the California Supreme Court relied on the FLSA's savings clause to extend California's overtime laws to seamen; and the Court of Appeal in the instant case considered itself to be bound by, and therefore followed *Tidewater* even though unlike the employees in *Tidewater*, Karmin admitted he was engaged in international and interstate commerce. (*See* Appendix A, page 2a.) This Court's ruling in *Locke* makes such reliance misplaced.

Unless federal law is applied to seamen who are engaged in international and interstate commerce, complete disruption of Congress's intended uniformity, harmony and regulation of maritime commerce results.

To accomplish the required uniformity in maritime commerce, Congress has extensively regulated the rights and obligations of seamen, including their remedies for personal injuries under the Jones Act,

(46 U.S.C. § 30104), their working hours under (46 U.S.C. § 8104) and their licensing and training under (46 U.S.C. § 7101 *et seq.* and the regulations promulgated thereunder.) The FLSA's exemption of seamen from overtime pay is consistent with Congress' intent to regulate maritime commerce. There is no room for state encroachment into the laws pertaining to seamen. The FLSA savings clause does not authorize the states to avoid a federal exemption.

(3) Post-*Locke*, the seaman's exemption from overtime has been correctly recognized as applied to seamen engaged in international and interstate commerce, in order to achieve the required uniformity of maritime law.

After *Locke*, a state's right to enact and enforce its overtime wage law as to seamen engaged in interstate commerce was considered by the district court in *Coil v. Jack Tanner Towing Co.*, 242 F. Supp. 2d 555 (S.D. Ill. 2002). The district court in *Coil* addressed the important role played by international and interstate commerce which was not considered or addressed by the California Supreme Court in *Tidewater* and then ignored by the Court of Appeal in *Karmin*.

The district court in *Coil* followed *Locke* and refused to broadly construe the savings clause in the FLSA to permit states to enact laws inconsistent with a federal statute. It first noted "state and federal courts have recognized through well-settled law that it is the intention of the Constitution and Congress for federal law to control *all* maritime law." *Coil*, 242 F. Supp. 2d at 558 (emphasis in original). It further held "states may not apply their respective laws if those laws would 'interfere with the proper harmony

and uniformity' of existing admiralty law." *Id.* at 559. Stated another way, the district court held:

> [S]tate law will yield to federal maritime law where a state remedy "works material prejudice to the characteristic features of the general maritime law or interferes with the proper harmony and uniformity of that law in its international and interstate relations."

Id.

Coil correctly recognizes federal law must prevail when in conflict with state law in matters of great federal interest such as interstate commerce. This Court in *Norfolk Southern Railway Co. v. Kirby*, 543 U.S. 14, 27 (2004), left no doubt about the supremacy of federal law in such matters, holding that "when state interests cannot be accommodated without defeating a federal interest . . . federal substantive law should govern."

CONCLUSION

The Ninth Circuit and the California courts have ignored the unequivocal mandate of federal law, namely the FLSA, in upholding payment of overtime wages to seamen. Despite express language exempting seamen from overtime wages in that federal statute, the Ninth Circuit and the California courts have judicially created an exception to the exemption and imposed overtime wage obligations under California law on the seamen's employer. California overtime wage law is repugnant to and directly conflicts with federal wage law applicable to seamen. After *Locke*, there is no basis for the Ninth Circuit and California state courts to rely on the saving clause in the FLSA to justify the application of California wage law. California wage law cannot be

accommodated without total derogation of federal law applicable to seamen and, more particularly, to seamen engaged in international and interstate commerce. This Court should grant review to resolve that conflict.

State laws affecting seamen primarily engaged in international and interstate commerce must yield to federal law. The Ninth Circuit and the California courts have ignored that principle in this case to the detriment of uniformity in the laws affecting maritime commerce.

Respectfully submitted,

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